



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,260	12/09/2003	Toshifumi Otsubo	2038-310	3334

7590 07/21/2008
LOWE HAUPTMAN GILMAN & BERNER, LLP
Suite 300
1700 Diagonal Road
Alexandria, VA 22314

EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

MAIL DATE DELIVERY MODE

07/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,260	Applicant(s) OTSUBO, TOSHIFUMI	
	Examiner MELANIE J. HAND	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 June 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

2. Applicant's arguments with respect to claims 3-20 have been considered but are not persuasive. As to the argument that Jitoe does not teach that the plurality of auxiliary elastic members 21(A,B,C, etc.) are interposed between said outer and inner sheets 3,2, respectively, applicant is referred to Fig. 6 of Jitoe, where it is clear that the elastics 21A,B are interposed between sheets 2 and 3. As to the argument that Jitoe teaches joining sites that are neither located between the backsheet 3 and the outer surface of core 4 nor between the film 5 and nonwoven fabric 26, it is noted that the features upon which applicant relies (i.e., joining sites located between the outer sheet and the outer surface of the absorbent structure or between a film and a nonwoven fabric) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3761

3. Claims 3-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 3 recites a plurality of joining sites that are uniformly distributed at least in an area of the claimed absorbent structure in one of the claimed front and rear waist regions. As neither the word "uniform" or "uniformly" appears anywhere in the specification, one of ordinary skill in the art must instead rely upon the widely understood meaning of the word "uniformly". Joining sites that are present only in the side regions and only between the middle portions of the auxiliary elastic members are joining sites that are concentrated in discrete areas with uneven density of sites per unit area throughout the article. Therefore, the distribution of joining sites disclosed and claimed cannot be uniform.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3, 4, 9, 10, 13-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Jitoue et al (JP 2000-107225).

With respect to **claim 3**: Jitoue teaches a pants-type disposable wearing article, comprising: a longitudinal direction, a waist-surrounding direction orthogonal to said longitudinal direction, a

Art Unit: 3761

chassis defining a front waist region 6, a rear waist region 7, a crotch region extending in said longitudinal direction between said front and rear waist regions (Fig. 1), an elasticized waist-hole 11 (Fig. 1, Abstract) and a pair of elasticized leg-holes 12 having elastic members 16 (Fig. 1, ¶0018), an absorbent structure 4 extending on an inner surface of said chassis between said front and rear waist regions 6,7 (Fig. 1, ¶0014). A plurality of auxiliary elastic members 21 are secured to said chassis by being elongated uniformly crosswise of diaper 1 (see Fig. 1) and then joined to the side edges of the diaper 1 in joining regions 9 (i.e. they are secured in a stretched state) (¶0018). Elastic members 21 extend in said waist surrounding direction so as to cross said absorbent structure 4 in at least one of the front and rear waist regions. (¶0016) Each of said auxiliary elastic members 21 have, in said waist surrounding direction, opposite end portions defined by those portions that extend from respective side edges 23 of core 4 to the respective joining region 9 of diaper 1, and a middle portion located between said opposite end portions, said opposite end portions being secured to said chassis in vicinities of transversely opposite side edges of the one of said front and rear waist regions (i.e. the vicinities are side edges of diaper 1 comprising joining regions 9 taught by Jitoue). (¶¶0016-0018) The said middle portion (defined as the portion of elastics 21 that extend between the side edges 23 of core 4) is free of direct securement to said chassis in the one of said front and rear waist regions 6,7. (¶¶0017,0021) The chassis comprises an outer sheet 3 in the form of a rear face sheet and an inner sheet 2 in the form of a liquid permeability surface sheet joined at a plurality of joining regions, e.g. regions where elastics 21 are joined to the surface sheet 2 and/or rear sheet 3. (Figs. 1-3) Jitoue teaches that the core 4 is bonded to the rear face sheet 3, therefore there exist joining sites distributed at least in an area underlying said absorbent structure 4 in the one of said front and rear waist regions 6,7 (¶0016) and that are spaced one from another by a given space in said longitudinal direction (Fig. 1). The said joining sites are necessarily located

Art Unit: 3761

between the middle portions of said auxiliary elastic members 21 as the middle portions of the members 21 are defined as the portions that extend between edges 23 of core 4. This arrangement of joining sites between the middle portions of the elastics is the only arrangement that would be consistent with Jitoe's teachings regarding attachment of the core to the outer sheet 3 and the lack of attachment of elastics 21 to the outer sheet 3 except for the side regions. (¶¶0017,0027) The joining sites of Jitoe are present in the side regions (¶0017), and also uniformly between the core 4 and rear face sheet 3 but between the middle portions of said elastics 21 (see ¶0027 and examiner's further explanation below), therefore the joining sites of Jitoe meets the limitation of uniform distribution where the interpretation of "uniform distribution" is consistent with other limitations in claim 3. Because the joining sites are in the side regions and the front and back waist regions 6,7 are "join[ed] mutually" and the joins are "intermittently located" in the joining region, Jitoe teaches joining sites that are spaced from one another by a given space in the longitudinal direction both in the side regions and in the region where the core is attached to the outer sheet 3. (¶¶0014,0017,0027) As to joining sites located between the middle portions of the auxiliary elastic members 21, as stated in the previous Office action with respect to claim 3, examiner considers the middle portions of the elastics 21 to be the portion extending between the side edges 23 of the core 4. Jitoe teaches in paragraph 0027 that the core 4 can be joined to the rear face sheet 3. Since Jitoe also teaches in paragraph 0017 that the elastics 21 are free of attachment under core 4 because they are only attached to the outer sheet 3 at the side regions 9 and are free of attachment at the core edges 23, the only places where joining sites can exist between the core 4 and outer sheet 3 that would render them consistent with Jitoe's teaching in paragraphs 0017 and 0027 would be between the middle portions of the elastics 21, thus anticipating the limitation of joining sites located between the middle portions of auxiliary elastic members.

With respect to **claim 4**: The plurality of joining sites 9 are distributed in a vicinity of transversely opposite side edges of said absorbent structure 1. (¶0017)

With respect to **claim 9**: The front and rear waist regions 6,7 of said chassis are joined to each other at the transversely opposite side edges. (Figs. 2,3, ¶0018)

With respect to **claim 10**: The article 1 further comprises a pair of leakage-barrier flaps in the form of cuffs at leg openings 12 that extend along transversely opposite side edges of said absorbent structure 1. (Fig. 1, ¶0015)

With respect to **claim 13**: Each of said auxiliary elastic members 21 is positioned between said inner and outer sheets 2,3 (Figs. 2,3); the middle portion of each of said auxiliary elastic members as defined *supra* by the Office with respect to claim 1 connects the opposite end portions of said auxiliary elastic member 21, and extends across an entire width of said absorbent structure 1 in the waist-surrounding direction from one of transversely opposite side edges of said absorbent structure to the other (Fig. 1, ¶¶0016,0017); and an entire section of said middle portion which is located between the transversely opposite side edges 23 of said absorbent structure 4 is directly bonded neither to the inner sheet nor to the outer sheet. (¶0017)

With respect to **claim 14**: The said joining sites are distributed between every pair of adjacent said auxiliary elastic members 21 and between the transversely opposite side edges of said absorbent structure.

With respect to **claim 15**: The joining sites 9 are arranged only along and in vicinities of the transversely opposite side edges of said absorbent structure. (Fig. 1)

With respect to **claim 16**: The limitation of claim 16 is considered functional language, which is given little patentable weight herein.

With respect to **claim 17**: Each of said auxiliary elastic members 21 is entirely free of direct attachment to said chassis except at the opposite end portions of said auxiliary elastic member. (¶0017)

With respect to **claim 19**: The auxiliary elastic members 21 are disposed between and spaced in the longitudinal direction from said elasticized waist hole and said elasticized leg holes. (Fig. 1)

With respect to **claim 20**: An area of said chassis taught by Jitoue, specifically an area of rear face sheet 3, which underlies said absorbent structure 4, and across which said auxiliary elastic members 21 extend, is taught by Jitoue to be substantially free of gathers. (¶0021) The phrase "substantially free" is interpreted herein in a manner consistent with the disclosure, which states that there are no gathers formed "except for the waist-hole's peripheral portions 10, the vicinity of the side edges 13 contiguous to the waist's opposite side portions 11 and the leg-holes'

Art Unit: 3761

peripheral portions 12 where a contractile force of the waist- and thigh-surrounding members 15, 16 acts on.” (Specification, Page 15, lines 4-10)

With respect to **claim 21**: Some of the joining sites are necessarily disposed between the middle portion of a topmost one of the auxiliary elastic members 21 and a longitudinal end of the absorbent structure in said at least one of said front and rear waist regions, wherein “some” is interpreted herein as meaning at least one, as applicant has not explicitly and clearly quantified the term “some” in the disclosure. Examiner’s position is based upon the fact that Jitoe discloses in Fig. 1 that the topmost elastic member 21B lies below the longitudinal end of the absorbent structure 4 in front waist region 6. As stated with respect to claim 3, the joining sites that attach the underside of core 4 to outer sheet 3 must be located between middle portions of said elastics 21 and more broadly, be located anywhere between the underside of the core 4 and the outer sheet 3 where elastics are not present. Thus, some of the discrete joining sites separated from one another by middle portions of elastics 21 are necessarily disposed between the middle portion of topmost elastic 21B and the longitudinal end of structure 4 in the front waist region. With regard to the limitation “so as to prevent the middle portions of the topmost auxiliary elastic member from moving in the longitudinal direction beyond said longitudinal end of the absorbent structure”, this limitation constitutes functional language that is given little patentable weight herein. Since the article of Jitoe anticipates the limitation that some of the joining sites are disposed between the topmost auxiliary elastic member and the longitudinal end in at least one of the front and rear waist regions, the joining sites of Jitoe disposed between the topmost elastic member and the longitudinal end of the absorbent structure in the waist regions are fully capable of preventing the middle portions of the topmost auxiliary elastic member from moving in the longitudinal direction beyond said longitudinal end of the absorbent

Art Unit: 3761

structure. The topmost auxiliary elastic member 21 B of Jitoe is closest to the waist-hole among all said auxiliary elastic members 21. (Fig. 1)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue et al ('225).

With respect to claim 5: Jitoue teaches a pants-type disposable wearing article 1 having a longitudinal direction, a waist-surrounding direction orthogonal to said longitudinal direction, a front waist region 6, a rear waist region 7, a crotch region, an elasticized waist-hole 11 and a pair of elasticized leg-holes 12, said article 1 comprising a chassis and an absorbent structure 4 extending on an inner surface of said chassis between said front and rear waist regions 6,7, and a plurality of auxiliary elastic members 21 secured to said chassis in a stretched state in said waist surrounding direction so as to cross said absorbent structure 4 in at least one of said front and rear waist regions 6,7, said article 1 further comprising: said plurality of auxiliary elastic members 21 having opposite end portions defined as those portions of the elastic 21 extending between a side edge 23 of core 4 and the respective side edge of diaper 1, and a middle portion

Art Unit: 3761

in said waist surrounding direction, said opposite end portions being secured to said chassis in vicinities of opposite side edges of the one of said front and rear waist regions (i.e. joining regions 9) while said middle portion being free to said chassis in the one of said front and rear waist regions.

Jitoue does not teach explicitly that a length of said auxiliary elastic members 21 in the waist-surrounding direction as measured in a contracted state thereof is substantially equal to a corresponding length of the absorbent structure in the one of said front and rear waist regions. The term "substantially equal" is interpreted herein in accordance with the following quantitative definition disclosed by applicant: "said length of said elastic members 21 is greater than a corresponding length of the absorbent structure in the one of said front and rear waist regions by 1-5 mm." However, this range is considered herein to fairly suggest a core having a width in which a auxiliary elastic member length in the range taught by Jitoue presents a length which exceeds a corresponding length of the absorbent structure (i.e. what is commonly called the transverse width) by 1-5 mm, as there is a finite number of absorbent core widths that will meet the claim limitation. The range of combinations of corresponding absorbent structure lengths and elastic lengths that meet this claim limitation is further limited by the distance between the legs of a user, which is universal among users of roughly the same size. That is, there is one substantially universal, standard limit on core width for infants and toddlers, and a second and larger, substantially universal limit on core width for adults. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007) One of ordinary skill in the art would be motivated to try core widths that conform to

Art Unit: 3761

anatomical dimensions, i.e. one would have good reason to pursue known options within one's technical grasp for the core width in the article of Jitoue that, in combination with an auxiliary elastic member length in the range taught by Jitoue would meet the claim limitation. It would therefore be obvious to one of ordinary skill in the art to modify the article of Jitoue such that an auxiliary elastic member length that is within the range taught by Jitoue exceeds the corresponding absorbent structure length by 1-5 mm.

With respect to **claim 7**: Jitoue does not teach that said absorbent structure comprises a liquid-pervious inner sheet adapted to face a wearer's body, a substantially liquid-impervious outer sheet disposed on the inner surface of said chassis, and a liquid-absorbent core disposed between said liquid-pervious inner sheet and said substantially liquid-impervious outer sheet. However, this precise absorbent structure in this configuration with these properties (i.e. liquid pervious, liquid impervious, liquid absorbent) is well known in the art, therefore it would be obvious to one of ordinary skill in the art to modify the article taught by Jitoue such that the absorbent structure comprises these items with a reasonable expectation of success to ensure an effective absorbent article.

With respect to **claim 8**: Jitoue does not teach that said absorbent structure comprises a liquid-pervious inner sheet adapted to face a wearer's body, a substantially liquid-impervious outer sheet disposed on the inner surface of said chassis, and a liquid-absorbent core disposed between said liquid-pervious inner sheet and said substantially liquid-impervious outer sheet. However, this precise absorbent structure in this configuration with these properties (i.e. liquid pervious, liquid impervious, liquid absorbent) is well known in the art, therefore it would be obvious to one of ordinary skill in the art to modify the article taught by Jitoue such that the

Art Unit: 3761

absorbent structure comprises these items with a reasonable expectation of success to ensure an effective absorbent article. Such an article fairly suggested by Jitoue with such an absorbent structure would thus have a back surface thereof covered with said chassis and therefore meet all of the claim limitations of claim 8.

With respect to **claim 12**: Jitoue does not explicitly teach a corresponding length for the absorbent structure and thus also does not explicitly teach that said length of said elastic members 21 is greater than a corresponding length of the absorbent structure in the one of said front and rear waist regions by 1-5 mm. However, this range is considered herein to fairly suggest a core having a width in which a auxiliary elastic member length in the range taught by Jitoue presents a length which exceeds a corresponding length of the absorbent structure (i.e. what is commonly called the transverse width) by 1-5 mm, as there is a finite number of absorbent core widths that will meet the claim limitation. The range of combinations of corresponding absorbent structure lengths and elastic lengths that meet this claim limitation is further limited by the distance between the legs of a user, which is universal among users of roughly the same size. That is, there is one substantially universal, standard limit on core width for infants and toddlers, and a second and larger, substantially universal limit on core width for adults. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007) One of ordinary skill in the art would be motivated to try core widths that conform to anatomical dimensions, i.e. one would have good reason to pursue known options within one's technical grasp for the core width in the article of

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoe et al ('225) in view of any one of Morman (U.S. Patent No. 5,910,224), Stancliffe et al (U.S. Patent No. 4,762,581) and Raabe et al (U.S. Patent No. 5,437,910), each one individually.

With respect to **claim 22**: Jitoe teaches that the joining sites are produced with hot melt adhesive and by heat joining or ultrasonic welding. (¶0027) Jitoe does not explicitly disclose that the joining sites are each in the form of a dot. However, it is well known in the diaper art to join layers of material together via hot melt adhesive and heat joining (e.g. heat calendering) or ultrasonic welding wherein the bonding sites are circular, i.e. dots, as supported by each one of Morman (Col. 10, lines 8-11), Stancliffe (Col. 4, line 57 – Col. 5, line 1) and Raabe (Col. 3, lines 17-32) to ensure secure attachment of the layers. Thus it would be obvious to one of ordinary skill in the art to modify the article of Jitoe such that the joining sites are each in the form of a circular bond or dot with a reasonable expectation of success to ensure structural integrity of the resulting laminate. Since Jitoe teaches that the entirety of core 4 may be joined via such adhesives from front edge to back edge and from side edge to side edge without bonding the area between the side edge and leg cuff ('225, ¶0025), the article fairly suggested by Jitoe comprises first joining sites arranged in the longitudinal direction in a middle zone of the absorbent structure, second joining sites arranged in the longitudinal direction on both sides of the first joining sites at both the front and back edges of the structure 4, and third joining sites

Art Unit: 3761

arranged in the longitudinal direction in the vicinity of the transversely opposite side edges of the absorbent structure, covering substantially the entire surface of core 4 that attaches to outer sheet 3.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue in view of Matsuura et al (JP 07-236650).

With respect to **claim 11**: Jitoue does not teach explicitly that a length of said auxiliary elastic members 21 in the waist-surrounding direction as measured in a contracted state thereof is generally equal to a corresponding length of the absorbent structure in the one of said front and rear waist regions. Matsuura teaches an absorbent article in which auxiliary elastic members are secured only at their side edges and wherein the elastic members are, in their non-tensioned, or contracted state, 1.3 times the corresponding length of the core. Applicant has not provided a clear and sufficient description for the phrase "generally equal" thus the length of the auxiliary elastic taught by Matsuura in its contracted state is considered herein to be "generally equal" to the corresponding length of said core.

8. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jitoue in view of Ando et al (JP 2001-145666).

With respect to **claim 6**: Jitoue does not teach a picture on said chassis in an area underlying said absorbent structure in one of said front and rear waist regions 6,7. Ando teaches an absorbent article having a picture 53a on a chassis in an area underlying an absorbent structure 4, specifically in an area on a rear sheet 3, in a front waist region. ('666, ¶0015) Ando teaches

Art Unit: 3761

that this picture lends improved appearance to the diaper, therefore it would be obvious to one of ordinary skill in the art to modify the article of Jitoue so as to have a picture on the chassis in an area underlying the absorbent core as taught by Ando to improve the appearance of the diaper.

With respect to **claim 18**: The middle portions of some of said auxiliary elastic members 21 underlie and extend across without causing gathers to be formed in the area of said chassis (¶0021). The limitation “thereby preventing the picture in said area from being distorted” is considered functional language that is given little patentable weight herein.

Jitoue does not teach a picture on said chassis in an area underlying said absorbent structure in one of said front and rear waist regions 6,7. Ando teaches an absorbent article having a picture 53a on a chassis in an area underlying an absorbent structure 4, specifically in an area on a rear sheet 3, in a front waist region. ('666, ¶0015) Ando teaches that this picture lends improved appearance to the diaper, therefore it would be obvious to one of ordinary skill in the art to modify the article of Jitoue so as to have a picture on the chassis in an area underlying the absorbent core as taught by Ando to improve the appearance of the diaper. The combined teaching of Jitoue and Ando thus teaches elastic members that extend across a picture and meet all of the claim limitations of claim 18.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

Application/Control Number: 10/730,260
Art Unit: 3761

Page 17

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761